

DEPOSITORS INSURANCE COMPANY

**1100 Locust Street, Dept 0900
Des Moines, Iowa 50319**

NAIC COMPANY CODE 42587

**MARKET CONDUCT EXAMINATION REPORT
as of December 31, 2002**

**PREPARED BY INDEPENDENT CONTRACTORS FOR THE
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE**

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July 24, 2003

The Honorable Doug Dean
Commissioner of Insurance
State of Colorado
1560 Broadway Suite 850
Denver, Colorado 80202

Commissioner Dean:

In accordance with §§ 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, rating, and claims practices of Depositors Insurance Company's private passenger automobile business, has been conducted. The Company's records were examined at its Rocky Mountain Regional Office, 7979 E. Tufts Ave. Parkway, Suite 1700, Denver, CO 80217.

The examination covered a one-year period from January 1, 2002 to December 31, 2002.

A report of the examination of Depositors Insurance Company is, herewith, respectfully submitted.

James T. Axman, CIE

Kathleen M. Bergan, AIE

Independent Market Conduct Examiners

**MARKET CONDUCT
EXAMINATION REPORT
OF THE
DEPOSITORS INSURANCE COMPANY**

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COMPANY PROFILE

Collectively, AMCO Insurance Company, Allied Property and Casualty Insurance Company, and Depositors Insurance Company are hereinafter referred to as Allied Insurance. Allied Group, Inc., a holding company, was acquired by Nationwide Mutual Insurance Company and Allied Mutual Insurance Company merged into Nationwide on October 1, 1998. The headquarters for Allied Insurance is located in Des Moines, IA, with offices located in Lincoln, NE, Denver, CO, Des Moines, IA, Santa Rosa, CA, and Sacramento, CA.

During the period under examination, the Rocky Mountain Regional Office located in Denver, Colorado serviced the seven northwestern states of CO, ID, MT, OR, UT, WA, and WY.

*As of the calendar year 2002 the Company had reported premium in Colorado of \$6,123,492 for Private Passenger Automobile, representing a .21% market share in Colorado.

*Data as reported in the Colorado Insurance Industry Statistical report.

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This procedure is in accordance with Colorado Insurance Law §10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in the production of this report, are the sole property of the Colorado Division of Insurance.

The purpose of the examination was to determine the Company's compliance with Colorado insurance law and with generally accepted operating principles related to Private Passenger Automobile insurance laws. Examination information contained in this report should serve only these purposes. The conclusions and findings of this examination are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners and the Colorado Division of Insurance. In reviewing material for this report the examiners relied primarily on records and material maintained by the Company. The examination covered a twelve (12) month period of the Company's operations, from January 1, 2002 to December 31, 2002.

File sampling was based on a review of underwriting and claims files that were systematically selected by using Audit Command Language (ACL) software and computer data files provided by the company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each file any concerns or discrepancies were noted on comment forms and delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree, disagree or otherwise justify the Company's noted action. At the conclusion of each sample the Company was provided a summary of the findings for that sample. The examination report is a report by exception. Therefore, much of the material reviewed is not addressed in this written report. Reference to any practices, procedures, or files, which manifested no improprieties, was omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines.

The report addresses only Private Passenger Automobile issues and contains information regarding exceptions to the Colorado insurance law. The examination included review of the following:

1. Company Operations and Management
2. Complaint Handling
3. Underwriting
4. Rating
5. Claims Practices

Certain unacceptable or non-complying practices may not have been discovered in the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's Private Passenger Automobile underwriting and claims practices to determine compliance with the Colorado insurance law as outlined in Exhibit 1.

Exhibit 1

Law	Subject
Section 10-4-602.	Basis for Cancellation.
Section 10-4-603.	Notice.
Section 10-4-604.	Nonrenewal.
Section 10-4-605.	Proof of notice.
Section 10-4-609.	Insurance protection against uninsured motorists-applicability.
Section 10-4-610.	Property damage protection against uninsured motorists.
Section 10-4-611.	Elimination of discounts – damage by uninsured motorist.
Section 10-4-613.	Glass repair and replacement.
Section 10-4-614.	Inflatable restraint systems - replacement - verification of claims.
Section 10-4-706.	Required coverages - complying policies - PIP examination program.
Section 10-4-706.5.	Operator's policy of insurance.
Section 10-4-707.5.	Ridesharing arrangements - benefits payable - required coverage.
Section 10-4-708.	Prompt payment of direct benefits.
Section 10-4-709.	Coordination of benefits.
Section 10-4-710.	Required coverages are minimum.
Section 10-4-711.	Required provision for intrastate and interstate operation.
Section 10-4-713.	No tort recovery for direct benefits.
Section 10-4-714.	Limitation on tort actions.
Section 10-4-715.	No limitation on tort action against non-complying tort-feasors.
Section 10-4-717.	Intercompany arbitration.
Section 10-4-718.	Quarterly premium payments.
Section 10-4-719.	Prohibited reasons for nonrenewal or refusal to write a policy of automobile insurance applicable to this part 7.
Section 10-4-719.5.	Discriminatory standards - premiums - surcharges - proof of financial responsibility requirements.
Section 10-4-719.7.	Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited.

Section 10-4-720.	Cancellation - renewal - reclassification.
Section 10-4-721.	Exclusion of named driver.
Section 10-4-724.	Reduction in rates for drivers aged fifty-five years or older who complete a driver's education course - legislative declaration.
Section 10-4-725.	Certification of policy and notice forms.
Section 10-3-1103.	Unfair methods of competition and unfair or deceptive acts or practices prohibited.
Section 10-3-1104.	Unfair methods of competition and unfair or deceptive acts or practices.
Regulation 1-1-7.	Market Conduct Record Retention.
Regulation 5-1-2.	Application and Binder Forms.
Regulation 5-1-10.	Rate and Rule Filing Regulation
Regulation 5-1-16.	Limitations on the Use of Credit Information or Insurance Score
Regulation 5-2-1.	Relative Value Schedule for No Fault.
Regulation 5-2-2.	Renewal of Automobile Insurance Policies – Excluded Named Drivers.
Regulation 5-2-3.	Auto Accident Reparations Act (No Fault) Rules and Regulations
Regulation 5-2-6.	Automobile No Fault Cost Containment Options.
Regulation 5-2-8.	Timely Payment of Personal Protection Benefits.
Regulation 5-2-9.	Personal Injury Protection Examination Program.
Regulation 6-1-1.	Limiting coverage.
Regulation 6-2-1.	Complaint Record Maintenance.
Regulation 6-2-2.	Responses to Division Inquiries Regarding Complaints.

Company Operations/Management

The examiners reviewed Company management, implementation, and quality controls, record retention, installment payment plans, anti-fraud plan, forms certification, and timely cooperation with the examination process.

Complaints

The examiners reviewed and compared the complaint log maintained by the Division of Insurance against the Company's complaint log to verify the accuracy of the Company's tracking system. The examiners also evaluated the Company's complaint handling methodology and reviewed the reason for and disposition of complaints.

Producers

The examiners reviewed new business applications written in the State of Colorado for the period under examination and compared those documents against the list of producers provided by the Company. The Company has a Colorado Regional office where all new business operations are handled. The Company uses Independent Agents licensed to write business through the Company.

Contract Forms and Endorsements

The following Private Passenger Automobile forms and endorsements were reviewed for compliance applicable to the period under examination as filed with the Colorado Division of Insurance on July 9, 2002:

Title	Form
Personal Auto Policy	AA0001
Allied Extra Coverages	AA0008
Special Physical Damage Coverage	AA0060
Rental Reimbursement	AA0078
Named Driver Exclusion Agreement	AA0079
Amendment of Policy Provisions	AA0161
Towing and Labor Costs Coverage	AA0303
Split Liability Limits	AA0309
Auto Leasing Coverage	AA0335
Named Non-Owner Coverage	AA0348
Split Uninsured Motorist Limits	AA0401
Property Damage Uninsured Motorist Coverage	AA0437
Personal Injury Protection Coverage	AA0561
Loss Payable Clause	PP0305
Extended Non-Owned Coverage	PP0306
Coverage for Damage to Your Auto (Stated amount)	PP0308
Mexican Collision Coverage	PP0356
Uninsured/Underinsured Motorist Coverage Exclusion	PP0405
Personal Auto Declarations	13102
Privacy Statement and Procedures	IN0000
Summary Disclosure Form	IN0550
Personal Auto Application	13229
Notice of Cancellation	NC1001
Notice of Nonrenewal	NN1001
Coverage Summary	TM0100
Premium Payment Plans	TM0151
Explanation of Personal Injury Protection	TM0242
Summary Disclosure Form	TM0262
Personal Injury Protection Managed Care Arrangement	11471

Notice of Nonpayment	14719
PIP offer of coverage options	15119
Notice of Insurance Information Gathering Practices	14747
Important Information Form	110061
Notice of Reduction or Increase in Coverage	249
Uninsured Motorists Bodily Injury-Colorado	10127
Request to Delete Work Loss Benefits	11570

New Business /Cancellations/Nonrenewals/Surcharges/Rejections/Renewals

For the period under examination, the examiners systematically selected the following underwriting samples to determine compliance with underwriting practices:

Review Lists	Population	Sample Size	Percentage to Population
New Business	3623	50	1%
Nonrenewals	114	114	100%
Cancel all Causes	97	97	100%
Cancel non-pay	1842	50	3%
Surcharges	1003	50	5%
Cancel 1 st 59 days	280	50	18%
Rejections	304	50	16%
Renewal	13,550	100	.7%

Rating

The examiners reviewed the rate, rule filings, statistical justifications, and methodology submitted to Colorado Division of Insurance for the period under examination. This information was then compared against a sample of new business and renewal policies, rated by each coverage, to determine compliance with base rates, territory codes, symbols, class plans, discounts, tier-rating factors, and final premium calculations.

Claims

For the period under examination, the examiners systematically selected the following samples to determine compliance of claims handling practices and claims manual rules:

Review Lists	Population	Sample Size	Percentage to Population
First Party	2544	50	2%
Third Party	1271	50	4%
PIP paid claims	422	50	12%
Subrogation	137	137	100%
Total loss	422	50	12%
Denied for cause	384	55	14%
Uninsured Motorist BI/PD	32	32	100%

EXAMINATION REPORT SUMMARY

At the beginning of the examination, the examiners met with the staff and coordinator to discuss the entire audit review process. One of the topics addressed was that although AMCO Insurance Company, Nationwide Insurance Company of America, Depositors Insurance Company, and Allied Property and Casualty Insurance Company, are separate companies, there are many concurrent policy procedures, forms, underwriting rules, claims practices, in common and handled in the same location, overseen by the same administrative management.

Therefore, it was agreed by all parties involved, the Company, the Colorado Division of Insurance, and the examiners, that in those cases where it appeared that a comment form may be applicable to the other companies in the group, the examiners would include an option in the final examination report to "deem" the findings applicable to all companies, even though the actual findings may have been exclusively identified in AMCO Insurance Company during the scope of the examination for the year 2002.

The Colorado Division of Insurance reserved the right to exam any Company of the group should circumstances arise which would warrant another examination.

The examination resulted in four (4) issues arising from the Company's apparent failure to comply with Colorado insurance law that govern all property and casualty insurers operating in Colorado. These issues involved the following categories:

Company Operations and Management:

In the area of company operations and management one (1) compliance issue is addressed in this report: The issue in this phase is identified as follows:

- Using the factor of age as a means of reclassifying new business applicants thereby placing them in a higher rated tier.

It is recommended that the Company review its company operations practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to each issue addressed.

Complaint Handling:

In the area of complaint handling, no compliance issues are addressed in this report.

Underwriting:

In the area of underwriting, two (2) compliance issues are addressed in this report. These issues arise from Colorado insurance law requirements that must be complied with whenever policies are issued, canceled, rejected, non-renewed, or surcharged. The issues in this phase are identified as follows:

- Failure to offer a named driver exclusion.
- Refusal to write a Private Passenger Automobile policy of insurance solely on the basis of the applicant's prior limit of liability.

It is recommended that the Company review its underwriting practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to each issue addressed.

Rating:

In the area of Rating, no compliance issues are addressed in this report.

Claim Practices:

In the area of claim practices, one (1) compliance issue is addressed in this report. Issues arise from Colorado insurance law requirements dealing with the fair and equitable settlement of claims, claims handling practices, payment of PIP claim benefits, and the timeliness and accuracy of claim payments. The issue in this phase is identified as follows:

- Delay in the payment of PIP benefits.

It is recommended that the Company review its claim handling practices and procedures and make necessary changes to ensure future compliance with applicable statutes and regulations as to each issue addressed.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of previous Market Conduct Exams are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

DEPOSITORS INSURANCE COMPANY

PERTINENT FACTUAL FINDINGS

PERTINENT FACTUAL FINDINGS

COMPANY OPERATIONS

Issue A: Using the factor of age as a means of reclassifying new business applicants thereby placing them in a higher rated tier.

Section 10-4-719, C.R.S., Prohibited reasons for nonrenewal or refusal to write a policy of automobile Insurance applicable to this part 7, states, in part:

(1) No insurer authorized to transact or transacting business in this state shall refuse to write or refuse to renew a policy of insurance affording the coverage required by operation of sections 10-4-706 and 10-4-707 solely because of the age, color, sex, national origin, residence, marital status, or lawful occupation, including the military service, of anyone who is, or seeks to become insured, or solely because another insurer has canceled a policy or refused to write or renew such policy. The commissioner shall administer and enforce the provisions of this subsection (1).

Additionally, Colorado Regulation 5-2-3 [amended] Auto Accident Reparations Act (No-Fault) Rules And Regulations, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue under the authority of Sections 42-1-204, 104-704, 10-4-718, 10-4-719.7, and 10-1-109, C.R.S. states, in part:

Section 3 Rules.

E. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

1. Basis for refusal to write a policy of automobile insurance.

a. Colorado law prohibits discrimination solely based on age, color, sex, national origin, residence, marital status, or lawful occupation, including the military service. Prohibited underwriting or rating practices may not be used in combination with any other practice when use of the prohibited practice results in a rejection, cancellation nonrenewal, reclassification or reduction in coverage which would not have occurred but for the prohibited practice.

In the Company's Private Passenger Automobile Underwriting Manual, for both the Preferred and Auto Max program, under the Plan Factor tables, it was noted that the best rated tier factor discount is prohibited for the following ages:

- Preferred: (Premier - factor=.85)
Age of Principal operator:
Under age 21 (Married/single)
Ages 21-24 (Married/Single)
Ages 25-29 (Single)
- AutoMax: (Level 1 - factor =.55)
Age of Principal operator:
Ages 75 & Over

The applicants listed in the above categories, according to the Company's current rating methodology and classification of all new business, were prevented from qualifying for the best rated tier categories in both the Preferred and AutoMax programs, due solely because of their age.

The use of age as a criteria in the Company's tier-rating methodology for placing an applicant in a higher rated tier, or reclassification, is prohibited by the Colorado insurance law and considered a discriminatory practice.

Recommendation # 1:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Section 10-4-719, C.R.S. and Colorado Regulation [amended] 5-2-3. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has restructured its tier rating program to include acceptability of all ages in the best rated tier categories and implemented necessary changes in order to ensure compliance with the Colorado insurance law.

**This issue deemed from the findings of the AMCO Insurance Company examination report.*

PERTINENT FACTUAL FINDINGS

UNDERWRITING

Issue B: Failure to offer a named driver exclusion.
--

Section 10-4-719.7, C.R.S., Refusal to write, changes in, cancellation, or nonrenewal of policies prohibited, states, in part:

(b) (I) No insurer shall refuse to write a complying policy solely because of the claim or driving record of one or more but fewer than all of the persons residing in the household of the named insured.

(II) An insurer shall offer to exclude any person by name pursuant to section 10-4-721 in the household if such person's driving record and claim experience would justify the refusal by such insurer to write a policy for such person if such person were applying in such person's own name and not as part of a household.

Section 10-4-721, C.R.S., Exclusion of named driver, states, in part:

(1) In any case where an insurer is authorized under this part 7 to cancel or refuse to renew or increase the premiums on an automobile liability insurance policy under which more than one person is insured because of the claim experience or driving record of one or more but less than all of the persons insured under the policy, the insurer shall in lieu of cancellation, nonrenewal, or premium increase offer to continue or renew the insurance but to exclude from coverage, by name, the person whose claim experience or driving record would have justified the cancellation or nonrenewal. The premiums charged on any such policy excluding a named driver shall not reflect the claims, experience, or driving record of the excluded named driver.

In the review of cancellations within the first 59 days, it was noted that the Company did not offer a named driver exclusion in seven (7) instances.

This same issue was cited in a previous examination of an affiliated Company, Allied Property & Casualty Insurance, Final Agency Order O-00-194.

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Automobile Cancellations within the first 59 days of inception

Population	Sample Size	Number of Exceptions	Percentage to Sample
280	50	7	14%

An examination of fifty (50) policies cancelled, representing 18% of those policies cancelled within the first 59 days of inception by the Company during the examination period, showed seven (7) exceptions (or 14% of the sample) wherein the Company failed to offer a named driver exclusion as required by the Colorado insurance law.

Recommendation #2:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-4-719.7 and 10-4-721, C.R.S. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has offered a named driver exclusion in those cancellations warranted and implemented necessary changes in order to ensure compliance with the Colorado insurance law.

**This issue deemed from the findings of the AMCO Insurance Company examination report.*

Issue C: Refusal to write a Private Passenger Automobile policy of insurance solely on the basis of the applicant's prior limit of liability.

Colorado Regulation [Amended] 5-2-3, Auto Accident Reparations Act (No-Fault) Rules And Regulations, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue under the authority of §§ 42-1-204, 10-4-704, 10-4-718, 10-4-719.7, and 10-1-109, C.R.S. states, in part:

3. Rules

E. Rules Limiting Insurers' Action To Refuse To Write, Cancel, Nonrenew, Increase Premium, Surcharge Or Reduce Coverages

1. Basis for refusal to write a policy of automobile insurance.

d. Pursuant to §10-4-710(5), C.R.S., no insurer shall refuse to write, cancel or nonrenew, surcharge, or place an applicant in a higher priced program or plan solely on the basis that the applicant's prior limit of liability was the minimum limit of liability required by §10-4-705, C.R.S.

In the Company's Underwriting guidelines for Risk Selection, the following language is contained, in part:

"Liability limits- not looking to write - minimum limits in the preferred market- not a true preferred client if they're looking for minimum limits coverage"

Also, in review of cancellations within the first 59 days, it appeared that the Company refused to write a policy of insurance on the basis of minimum limits submitted to the Preferred Automobile Program. The reason indicated on the policy cancellation was as follows:

"Cancellation in the first 60 days due to underwriting reasons including (name) driving history and Minimum limits submitted to the Preferred Program"

The Company is prohibited from using Minimum limits as a basis for refusing to write a policy of insurance as stated in the Colorado insurance law.

Recommendation #3:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Colorado Regulation (amended) 5-2-3. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has amended its Colorado state specific underwriting guidelines and implemented necessary changes in order to ensure compliance with the Colorado insurance law.

**This issue deemed from the findings of the AMCO Insurance Company examination report.*

PERTINENT FACTUAL FINDINGS

CLAIMS PRACTICES

Issue D: Delay in the payment of PIP benefits.

Section 10-3-1104, C.R.S., Unfair methods of competition and unfair or deceptive acts or practices, provides, in part:

(1) The following are defined as unfair methods of competition and unfair or deceptive acts or practices in the business of insurance:

(h) Unfair claim settlement practices: Committing or performing, either in willful violation of this part 11 or with such frequency as to indicate a tendency to engage in a general business practice, any of the following:

(II) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

Section 10-4-708 C.R.S., Prompt payment of direct benefits, provides, in part:

(1) Payment of benefits under the coverages enumerated in section 10-4-706(1)(b) to (1)(e) or alternatively, as applicable, section 10-4-706(2) or (3) shall be made on a monthly basis. Benefits for any period are overdue if not paid within thirty days after the insurer receives reasonable proof of the fact and amount of expenses incurred during that period; except that an insurer may accumulate claims for periods not exceeding one month, and benefits are not overdue if paid within fifteen days after the period of accumulation.

Additionally, Amended Regulation 5-2-8 [Amended and effective September 1, 2000], Timely Payment of Personal Injury Protection Benefits, jointly promulgated by the Commissioner of Insurance and the Executive Director of the Department of Revenue pursuant to §§10-1-109, 10-4-704, 10-4-708(1.3), and 10-3-1110(1), C.R.S.

Section 3. Rule

B. Prompt Payment of PIP Benefits

Section 10-4-708(1), C.R.S. provides that benefits under the coverages enumerated in §10-4-706, C.R.S. are overdue if not paid within 30 days after the insurer receives reasonable proof of the fact and amount of the expenses incurred.

The following chart illustrates the significance of error versus the population and sample examined:

Private Passenger Auto PIP Claims Paid

Population	Sample Size	Number of Exceptions	Percentage to Sample
422	50	13	26%

An examination of fifty (50) PIP claim files, representing 12% of all PIP claim files paid by the Company during the examination period, showed thirteen (13) exceptions (26% of the sample) wherein the Company failed to pay at least one PIP medical bill in each file within the 30 day statutory standard as required by Colorado insurance law. Of the instances cited, no accumulations were applicable in these instances.

Recommendation #4:

Within 30 days, the Company should provide documentation demonstrating why it should not be considered in violation of Sections 10-3-1104 and 10-4-708, C.R.S. and Colorado Amended Regulation 5-2-8. In the event the Company is unable to provide such documentation, it should be required to provide evidence to the Division of Insurance that it has reviewed its claims handling of PIP benefit payments and implemented necessary procedural changes in order to ensure compliance with the Colorado insurance law.

**This issue deemed from the findings of the AMCO Insurance Company examination report.*

Summary of Recommendations**DEPOSITORS INSURANCE COMPANY**

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Independent Market Conduct Examiners

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Participated in this examination and in the preparation of this report